North Dakota Law Review

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Workmen's Compensation Decisions

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By statute of 1923, annual state tax of 3 cents per acre is levied on lignite coal deposits and all titles to minerals underlying lands the ownership of which have been severed from the overlying strata of the land. Plaintiff railway contended that said law was unconstitutional because it does not provide for assessment of mineral reserves in the county or township in which it is situated as provided for in the assessment of other real property, and because it is not a uniform tax in that it provides a flat tax per acre regardless of value. From a judgment for defendant, plaintiff appeals. HELD: Reversed. 1. Classification of property must insure reasonable uniformity within the territorial taxing district. 2. Under state constitution all real property not used directly or indirectly in carrying of persons or property must be assessed in the county, city or township in which it is situated.

Palaniuk vs. Allis Chalmers Manufacturing Co.: Plaintiff bought a gasoline tractor from defendant by written contract of sale which contained a provision that notice of defect must be furnished within 10 days after it was put into use and the sale might then be rescinded, and that failure to do this would be considered as conclusive evidence that the machine was reasonably fit. Plaintiff notified defendant after using the tractor that it was unsatisfactory, and defendants repaired it. After using the tractor 3 years plaintiff served on defendant a written notice of rescission of contract. Plaintiff then brought suit for damages and recovery of purchase price. From a verdict for plaintiff defendant appeals. HELD: Reversed. A seller warrants that a machine is reasonably fit for the purpose for which it is purchased. However, buyer of machinery may by express contract with seller stipulate that in case the machine bought is not so reasonably fit he shall have no remedy except by rescission, and where he does so contract no other remedies are open to him.

September 5 and 6

WORKMEN'S COMPENSATION DECISIONS

The test of dependency is actual support, not the inability of the alleged dependent to earn a livelihood.—*Kitchikan Lumber Co. vs. Bishop, 24 Fed. (2nd) 63 (Alaska).*

Workman who, at employer's request, returned to a store after hours to admit an electrician and permit him to do repair work, remaining until work was finished, and was then injured on the way home, does not come within the "going and coming" rule, but is entitled to compensation.—*State Fund vs. Industrial Accident Commission, 264 Pac. 514 (Cal.).*

Driver of team hitched to coal wagon drove his team upon a ferry boat, and there fell asleep while lying full length on the wagon seat. A deckhand attempted to arouse him just as team started off the boat.

Driver was jolted off the seat and killed. Held, that his negligence was not equivalent to abandonment of employment. (Appears to be contra decision cited last month.)—*Corrina vs. De Barbieri,* 160 *N. E.* 397 (*N. Y.*).

September 5 and 6

THE 1928 REVENUE ACT

Mr. Dana Latham, of the Los Angeles (Cal.) Bar, has the following interesting comments on the Federal Revenue Act of 1928 in the June issue of the Los Angeles Bar Association Bulletin:

Rates

The new bill reduces the corporate tax rate beginning January 1, 1928, to 12%, but makes no provision for a sliding scale depending on the amount of income. In addition, the credit for determining net income subject to tax was increased from $2,000 to $3,000. This is the first relief afforded corporate taxpayers since 1921. Nevertheless, a small corporation, the stock of which is closely held by its actual managers, could function much more economically from a Federal tax standpoint, as an old-fashioned partnership.

Individuals whose incomes fall within what is generally termed the "intermediate" surtax brackets, that is, from $20,000 to $80,000, received fairly substantial benefits, although the maximum surtax rate of 20% on incomes in excess of $100,000 remains unchanged, as do the normal tax rates on individual incomes.

Professional and salaried individuals fortunate enough to earn up to $30,000 a year from personal services, received some small relief due to the increase in the earned income credit from $20,000 to $30,000. As in the case of corporations, the provisions relative to individuals become effective January 1, 1928.

The automobile excise tax of 3% was repealed, effective May 29, 1928. Theatre patrons received the benefit of an increase in the exemption for admission tax of from 75c to $3.00. Boxing was penalized by the imposition of a tax of 25% where the admission charged is $5.00 or more.

Annual club dues up to $25 are now exempt from tax. Whatever benefit may accrue from this exemption, however, is more than offset by a specific provision to the effect that all payments to a club, in excess of the exemption, even though consisting of payments for stock therein, are subject to tax, either as dues or initiation fees. The new provisions relative to both admissions and club dues are effective thirty days from May 29, 1928.

In the case of tax-free government bonds, where the amount to be withheld is not more than 2% of the interest due, the new act requires 5% to be withheld at the source in the case of non-resident aliens, and 12% in the case of foreign corporations. In such cases the amount to be withheld is the maximum normal tax in the case of individuals, and the flat corporate rate where corporations are concerned.

Federal estate tax rates remain unchanged.